

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
SACRAMENTO**

**In the Matter of the Licenses and  
Licensing Rights of:**

**STEPHEN ANTHONY HARRIS,**

**Respondent.**

**Case No. LBB 0643-AP (AR)**

**OAH No. L2002090674**

**PROPOSED DECISION**

This matter came on regularly for hearing before H. Stuart Waxman, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on January 13, 2003.

Complainant, Harry W. Low, Insurance Commissioner, was represented by Kevin W. Bush, Staff Counsel.

Respondent, Stephen Anthony Harris ("Respondent") was present and represented himself.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision.

**FACTUAL FINDINGS**

The Administrative Law Judge makes the following factual findings:

1. The Accusation was filed by Harry W. Low, who, at the time of filing, was the Insurance Commissioner of the State of California, acting in his official capacity.
2. Respondent is presently licensed by the Insurance Commissioner to transact insurance business as a Life Agent, and has been so licensed since May 10, 2000.
3. On May 11, 2001, in Superior Court of California, County of San Bernardino, Chino District, in Case No. MWV063798, Respondent was convicted by a jury of violation of Penal Code section 488 (petty theft), a misdemeanor.

4. Respondent was placed on probation for a period of 24 months, was ordered to pay fees and fines totaling \$415.00 and was further ordered to stay away from the Saks Fifth Avenue store in Ontario Mills. He was sentenced to served one day in San Bernardino County Jail with credit for one day time served. Respondent is not certain whether he has paid all or only most of the court-ordered fees and fines.

5. The facts and circumstances underlying the conviction are that, while shopping in Saks Fifth Avenue, Respondent was observed by Loss Prevention personnel placing a necktie into his sock and leaving the store without paying for it. The tie was valued at \$59.90. Respondent vehemently denies committing the crime. He asserts the necktie belonged to him and that he brought it into the store to match with shirt and suit patterns.

6. Respondent is employed as a financial planner. He prides himself on his honesty and integrity in dealing with his customers. In addition, were he ever tempted to engage in fraudulent or dishonest conduct, he would be unable to do so. His business is “customer driven” (Respondent’s term), in that his responsibility is to provide the customer with investment products the customer desires, based on the customer’s financial needs. Not only would a customer recognize any dishonesty by Respondent, but several checks and controls, both within and outside of his place of employment, would detect any dishonesty in which he might engage. In addition, the customer has a “free look” or “lookover” period to reject the product after Respondent makes the sale. Respondent takes numerous ethics courses, workshops and examinations offered by the Securities and Exchange Commission and the National Association of Securities Dealers.

7. Respondent has held professional and/or occupational licenses since March of 1980, including a real estate license, an insurance license and various securities licenses. He has never been accused of any fraudulent transactions in connection with those licenses. His career and the licenses which enable him to engage in it are extremely important to him. Within weeks of his last insurance license renewal, he had already accrued 53 continuing education credits toward his next renewal.

8. Respondent is 53-years-old. He is married with two grown daughters, one of whom is scheduled to graduate from law school this year and the other of whom is studying to become a physician. Respondent attends church with his family.

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## LEGAL CONCLUSIONS

Pursuant to the foregoing Factual Findings, the Administrative Law Judge makes the following Legal Conclusions.

1. Cause exists to suspend or revoke Respondent's licenses and licensing rights in that it would be against the public interest to permit Respondent to continue transacting insurance in the State of California, pursuant to Insurance Code sections 1668(b) and 1738, as set forth in Findings 3, 4 and 5.

2. Cause exists to suspend or revoke Respondent's licenses and licensing rights in that Respondent is lacking in integrity, pursuant to Insurance Code section 1668(e) and 1738, as set forth in Findings 3, 4 and 5.

3. Cause exists to suspend or revoke Respondent's licenses and licensing rights in that Respondent has been convicted of a public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property, pursuant to Insurance Code section 1668(m)(3) and 1738, as set forth in Findings 3, 4 and 5.

4. Cause exists to suspend or revoke Respondent's licenses and licensing rights in that Respondent has previously engaged in a fraudulent practice or act, pursuant to Insurance Code section 1668(e) and 1738, as set forth in Findings 3, 4 and 5.

Despite Respondent's claims of innocence, his conviction cannot be challenged at this administrative level. However, his claims may be used to consider the facts and circumstances underlying the conviction, factors in mitigation and aggravation, and the proper degree of discipline to be imposed.

Given his adamant belief in his innocence, Respondent is not to be faulted for his lack of remorse. Artificial acts of contrition are not required and, in some cases, the lack of remorse or contrition, demonstrates good rather than bad character. In Calaway v. State Bar (1986) 41 Cal.3d 743, 747-748, the Court stated:

"Justice Tobriner's opinion for this court in Hall v. Committee of Bar Examiners (1979) 25 Cal.3d 730, 744-745 [159 Cal.Rptr. 848, 602 P.2d 768], provides the appropriate response . . . a petitioner's 'consistent refusal to retract his claims of innocence and make a showing of repentance appears to reinforce rather than undercut his showing of good character. Precisely because the Committee made clear that [petitioner's] chances for admission would be improved if he demonstrated remorse, we find his refusal to do so indicative of good character rather than the contrary: [he] refused, in effect, to become the fraudulent penitent for his own advantage.

‘An individual's courageous adherence to his beliefs, in the face of a judicial or quasi-judicial decision attacking their soundness, may prove his fitness to practice law rather than the contrary. We therefore question the wisdom of denying an applicant admission to the bar if that denial rests on the applicant's choosing to assert his innocence regarding prior charges rather than to acquiesce in a pragmatic confession of guilt, and conclude that [petitioner] should not be denied the opportunity to practice law because he is unwilling to perform an artificial act of contrition. [Fn. omitted.]’ (Accord, *Hightower v. State Bar* (1983) 34 Cal.3d 150, 157 [193 Cal.Rptr. {Page 41 Cal.3d 748} 153, 666 P.2d 10]; *Martin B. v. Committee of Bar Examiners* (1983) 33 Cal.3d 717, 725-726 [190 Cal.Rptr. 610, 661 P.2d 160].)

“Justice Carter, in his caustic prose, put the matter succinctly in his dissenting opinion in *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 555 [248 P.2d 3]: ‘The basis of the majority opinion seems to be that petitioner has not made a lachrymose display of penitence, or come to the Throne of Grace humbly begging forgiveness for sins he claims not to have committed. Not only that, but he must apparently produce witnesses who have heard him shout from the roof tops that he was a sinner but has forsaken his sins and is now redeemed. The majority seems to have forgotten that deeds speak louder than selfserving protestations. By the record petitioner has conclusively demonstrated that his conduct since disbarment has established rehabilitation. Nothing more should be required ....’” (*Id.* at 747-748.)

Respondent felt so strongly that he was innocent of the charge against him that he demanded and went through a jury trial over an item valued at \$59.90. He continues to be as vehement concerning his innocence today as he was at that time. While the conviction must stand, Respondent need not express remorse over what he so strongly believes he did not do.

Respondent is proud of his strong work ethic and the honesty and integrity he brings to his career. His values are reflected in his strong family ties and the aspirations of his daughters to engage in professional careers.

This case warrants discipline against Respondent’s license. However, the evidence established that outright revocation would be unduly harsh and punitive. A properly conditioned restricted license should adequately protect the public interest while serving as an additional deterrent against possible recurrence or recidivism.

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## **ORDER**

### **WHEREFORE, THE FOLLOWING ORDER is hereby made:**

All licenses and licensing rights of Respondent, Stephen Anthony Harris, are revoked; provided, however, that the revocation shall be stayed for three (3) years upon the following terms and conditions:

1. Respondent shall obey all laws, rules and regulations governing the rights, duties and responsibilities of an insurance licensee in the State of California; and
2. That no final subsequent determination be made, after hearing or upon stipulation, that cause for disciplinary action occurred within three (3) years of the effective date of this Decision. Should such a determination be made, the Insurance Commissioner may, in his discretion, vacate and set aside the stay order and reimpose all or a portion of the stayed revocation. Should no such determination be made, the stay imposed herein shall become permanent.

DATED: January 21, 2003

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H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings